SETTLEMENT AGREEMENT BETWEEN MISSOURI REAL ESTATE COMMISSION AND HELEN KRISTIN CARMICHAEL

Helen Kristin Carmichael ("Carmichael") and the Missouri Real Estate Commission ("MREC") enter into this Settlement Agreement for the purpose of resolving the question of whether Carmichael's license as a real estate broker salesperson, no. 1999026918, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,¹ the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the MREC under § 621.110, RSMo, Supp. 2012. The MREC and Carmichael jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo, Supp. 2012.

Carmichael acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against her at

¹ All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

the hearing; the right to present evidence on her behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against her; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Carmichael may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC.

Being aware of these rights provided to her by law, Carmichael knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Carmichael acknowledges that she has received a copy of documents that were the basis upon which the MREC determined there was cause for discipline, along with citations to law and/or regulations the MREC believes were violated. Carmichael stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the MREC that Carmichael's license as a real estate broker salesperson, license no. 1999026918, is subject to disciplinary action by the MREC in accordance with

the relevant provisions of Chapter 621, RSMo, and Chapter 339, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the MREC and Carmichael in Part II herein is based only on the agreement set out in Part I herein. Carmichael understands that the MREC may take further disciplinary action against her based on facts or conduct not specifically mentioned in this document that are either now known to the MREC or may be discovered.

I. <u>Joint Stipulation of Facts and Conclusions of Law</u>

Based upon the foregoing, the MREC and Carmichael herein jointly stipulate to the following:

- 1. Carmichael holds a Missouri real estate broker salesperson license, license no. 1999026918. Carmichael's license is, and was, valid at all times relevant herein.
- 2. On October 12, 2011, Carmichael pled guilty in the District Court of Johnson County, Kansas ("the court"), Case No. 11CR1147 ("criminal case"), to the non-grid felony of driving under the influence ("DUI"), in violation of Kan. Stat. Ann. § 8-1567 (West 2010).

- 3. In or around 2002, Carmichael was convicted of a DUI in the municipal court of Prairie Village, Kansas.
- 4. On November 3, 2010, Carmichael pled guilty to another DUI in the municipal court of Leawood, Kansas.
- 5. The 2002 and 2010 DUI offenses resulted in Carmichael being charged with a felony in Case No. 11CR1147, under Section 8-1567, Kan. Stat. Ann. (West 2010).
- 6. The charges underlying the 2011 criminal case were as follows, in pertinent part:

That on or about the 23rd day of May 2011, in the City of Leawood, County of Johnson, State of Kansas, HELEN KRISTEN CARMICHAEL did then and there unlawfully and feloniously operate a vehicle while under the influence of alcohol to a degree that rendered her incapable of safely driving a vehicle and HELEN KRISTEN CARMICHAEL has two or more prior convictions for driving under the influence of alcohol or drugs, a non-grid, non-person felony, in violation of K.S.A. 8-1567. (driving while under the influence of alcohol)

- 7. Section 8-1567, Kan. Stat. Ann. (West 2010), regarding the criminal offense of driving under the influence, states in relevant part:
 - a) No person shall operate or attempt to operate any vehicle within this state while:

(3) under the influence of alcohol to a degree that renders the person incapable of safely driving a vehicle;

- (f)(1) On the third conviction of a violation of this section, a person shall be guilty of a nonperson felony and sentenced to not less than 90 days nor more than one year's imprisonment and fined not less than \$1,500 nor more than \$2,500....
- 8. On December 21, 2011, the court sentenced Carmichael to a fine of \$1,500. The court placed Carmichael on supervised probation for one year, with an underlying jail term of 360 days. Carmichael was also sentenced to serve ten days in jail, followed by eighty days house arrest.
- 9. On March 8, 2012, her probation was revoked and she was placed on probation for an additional year.
- 10. On March 13, 2012, the Kansas Real Estate Commission ("KREC") indefinitely suspended Carmichael's Kansas salesperson license because she pled guilty to the DUI and because she failed to timely report the guilty plea to the KREC.
- 11. Section 339.100.2, RSMo Supp. 2012, authorizes the MREC to file a complaint with the Administrative Hearing Commission and states, in part:
 - 2. The commission may cause a complaint to be filed with the administrative hearing commission as provided by the provisions of chapter 621 against any person or entity licensed under this chapter or any licensee who has failed to renew or has surrendered

his or her individual or entity license for any one or any combination of the following acts:

. . .

(16) Committing any act which would otherwise be grounds for the commission to refuse to issue a license under section 339.040;

. . .

(18) Been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of this state or any other state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

- (20) Disciplinary action against the holder of a license or other right to practice any profession regulated under sections 339.010 to 339.180 and sections 339.710 to 339.860 granted by another state, territory, federal agency, or country upon grounds for which revocation, suspension, or probation is authorized in this state[.]
- 12. Section 339.040.1, RSMo Supp. 2012, relating to license requirements, provides:
 - 1. Licenses shall be granted only to persons who present . . . satisfactory proof to the commission that

they:

(1) Are persons of good moral character; and

- (3) Are competent to transact the business of a broker or salesperson in such a manner as to safeguard the interest of the public.
- 13. By pleading guilty to the felony of driving under the influence and engaging in the conduct underlying that crime, Carmichael demonstrated that she lacks good moral character, which is a ground for the MREC to refuse to issue a license under § 339.040.1(1), RSMo, and, therefore, cause to discipline Carmichael's license pursuant to § 339.100.2(16), RSMo Supp. 2012.
- 14. By pleading guilty to the felony of driving under the influence and engaging in the conduct underlying that crime, Carmichael demonstrated that she is not competent to transact the business of a real estate broker salesperson in such a manner as to safeguard the interest of the public, which is a ground for the MREC to refuse to issue a license under § 339.040.1(3), RSMo, and, therefore, cause to discipline Carmichael's license pursuant to § 339.100.2(16), RSMo Supp. 2012.
- 15. By pleading guilty to the felony of driving under the influence of alcohol, Carmichael pled guilty to an offense reasonably related to the

qualifications, functions or duties of a real estate broker salesperson and an offense involving moral turpitude. Therefore, cause exists to discipline Carmichael's license pursuant to § 339.100.2(18), RSMo Supp. 2012.

16. Because Carmichael was disciplined by the KREC for the DUI guilty plea, and that offense is also grounds for discipline in Missouri, cause exists to discipline Carmichael's license under § 339.100.2(20), RSMo Supp. 2012.

II. <u>Joint Agreed Disciplinary Order</u>

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the MREC in this matter under the authority of § 536.060, RSMo, and §§ 621.045.4 and 621.110, RSMo Supp. 2012.

1. Carmichael's license is on probation. Carmichael's license as a real estate broker salesperson is hereby placed on PROBATION for a period of THREE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Carmichael shall be entitled to practice as a real estate broker salesperson under Chapter 339, RSMo, as amended, provided Carmichael adheres to all the terms of this agreement.

- 2. <u>Terms and conditions of the disciplinary period.</u> The terms and conditions of the disciplinary period are as follows:
 - A) Carmichael shall keep the MREC apprised at all times of her current address and telephone number at each place of residence and business. Carmichael shall notify the MREC in writing within ten (10) days of any change in this information.
 - B) Carmichael shall timely renew her real estate license(s), timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain her license(s) in a current and active status. During the disciplinary period, Carmichael shall not place her real estate license(s) on inactive status as would otherwise be allowed under 20 CSR 2250-4.040 or 20 CSR 2250-4.050. Alternatively, without violating the terms and conditions of this Settlement Agreement, Carmichael may surrender her real estate license(s) by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Carmichael applies for a real estate license after surrender, Carmichael shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

- C) Carmichael shall meet in person with the MREC or its representative at any such time or place as required by the MREC or its designee upon notification from the MREC or its designee. Said meetings will be at the MREC's discretion and may occur periodically during the probation period.
- D) Carmichael shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.
- E) During the probationary period, Carmichael shall accept and comply with unannounced visits from the MREC's representative to monitor compliance with the terms and conditions of this Settlement Agreement.
- F) Carmichael shall comply with all relevant provisions of Chapter 339, RSMo, as amended, all rules and regulations duly promulgated there under, all local, state, and federal laws. "State" as used herein includes the State of Missouri and all other states and territories of the United States. Any cause to discipline Carmichael's license as a real estate broker salesperson under § 339.532.2, RSMo, as amended, that accrues during the disciplinary period shall also constitute a violation of this Settlement Agreement.

- 3. Upon the expiration of the disciplinary period, the license of Carmichael shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Carmichael has violated any term or condition of this Settlement Agreement, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Carmichael's license.
- 4. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.
- 5. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning any future violations by Carmichael of Chapter 339, RSMo, as amended, or the regulations promulgated there under, or of the terms and conditions of this Settlement Agreement.
- 6. This Settlement Agreement does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the MREC or may be discovered.

- 7. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Carmichael agrees and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.
- 8. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.
- 9. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.
- 10. The parties to this Settlement Agreement understand that the MREC will maintain this Settlement Agreement as an open record of the MREC as required by Chapters 324, 339, and 610, RSMo, as amended.

- 11. Carmichael, together with her partners, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.
- 12. Carmichael understands that she may, either at the time the Settlement Agreement is signed by all parties, or within fifteen days thereafter, submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Carmichael's license. If Carmichael desires the

Administrative Hearing Commission to review this Settlement Agreement,
Carmichael may submit her request to: Administrative Hearing Commission,
Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557,
Jefferson City, Missouri 65102.

13. If Carmichael requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Carmichael's license. If the Administrative Hearing Commission issues an order stating that the Settlement Agreement does not set forth cause for discipline, then the MREC may proceed to seek discipline against Carmichael as allowed by law. If Carmichael does not request review by the Administrative Hearing Commission, this Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the MREC.

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Helen Kristin Carmichael	Janet Carder, Executive Director
Date:8/20/13	Date: Aug 27, 2013

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